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19
20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22
23 CHASOM BROWN, WILLIAM BYATT,
24 JEREMY DAVIS, CHRISTOPHER
25 CASTILLO, and MONIQUE TRUJILLO
26 individually and on behalf of all similarly
27 situated,

28
29 Plaintiffs,
30
31 v.
32
33 GOOGLE LLC,
34
35 Defendant.

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Case No.: 4:20-cv-03664-YGR-SVK

1 **PLAINTIFFS' RENEWED REQUEST TO**
2 **DEPOSE GOOGLE CEO SUNDAR**
3 **PICHAI**

4 Magistrate Judge: Hon. Susan van Keulen

Pursuant to the Court's orders (Dkt. 523, 602), Plaintiffs respectfully renew their request to depose Google CEO Sundar Pichai. As detailed below, the evidence here far exceeds all apex requirements, showing (1) Mr. Pichai has unique, superior, and personal knowledge about key issues in this case, including Google's perpetuation of known private browsing misconceptions, and (2) Plaintiffs exhausted less intrusive means of discovery for this information. Plaintiffs deposed over 20 former and current Google employees, including the recent deposition of Sabine Borsay, who wrote about critical decisions and statements by and to Mr. Pichai regarding Incognito. Google witnesses repeatedly testified that they had no recollection of what Mr. Pichai said, considered, or decided with respect to these key issues. Because of Mr. Pichai's extensive involvement, and Plaintiffs' inability to obtain relevant testimony from others, Plaintiffs respectfully request 3.5 hours for his deposition,¹ to take place at least 15 days before Plaintiffs' opposition to any summary judgment motion or start of trial, whichever comes first. Attached as **Exhibit 1** is the Declaration of Rossana Baeza with supporting documents, and attached as **Exhibit 2** is a proposed order.

Mr. Pichai's Unique, First-Hand & Superior Personal Knowledge & Involvement in Key Events & Decisions	Plaintiffs' Exhaustion of Less Intrusive Means to Obtain This Information Without Mr. Pichai's Deposition
<p>2015 [REDACTED] Regarding [REDACTED] Incognito : A 2015 Google study called [REDACTED]</p> <p style="text-align: center;">Ex. A</p> <p>[REDACTED] <i>Id.</i> (emphasis added).²</p> <p>This document indicates Mr. Pichai had knowledge in 2015 about [REDACTED]</p> <p>[REDACTED]</p>	<p>Plaintiffs sought production (e.g., RFPs 27 (Ex. B), 169 (Ex. C)) but were unable to identify any produced copy of the [REDACTED]. Plaintiffs also deposed multiple lower-level Google employees about [REDACTED], but they were unable to provide information about [REDACTED]</p> <p>Ex. D, Borsay Tr. 205:13-17; Ex. E, Palmer Tr. 86:6-14; Ex. F, Felt Tr. 60:19-61:22.</p>

¹ With the exception of Ex. M, submitted documents reference Mr. Pichai either in the main text or in the metadata (showing Mr. Pichai received the document as part of one or more email distribution lists included in the emails). In Plaintiffs' last submission, Plaintiffs inadvertently did not include that metadata showing Mr. Pichai's involvement.

² All exhibit references in this submission are exhibits to the Declaration of Rossana Baeza.

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2016

In 2016 emails, Google
employee Sabine Borsay

2

Ex. G. Ms. Borsay wrote

3

Id.

4

A later email from Ms. Borsay to Google
employee Chris Palmer

5

Palmer

Ex. H (emphasis added). Mr.

6

Palmer

Ex. I.

7

Ms. Borsay also wrote that Mr. Pichai was the
one who

8

Palmer

Ex. J.

9

These emails establish that

10

Palmer

11

Palmer

12

2019 Pichai &

: In

13

March 2019, Mr. Pichai

14

Ex. L.³

15

³ The

Ex. M.

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Plaintiffs sought production (e.g., RFPs 33 (Ex. B), 169 (Ex. C)) but have been unable to identify any document revealing what discussions Google employees

None of the witnesses Plaintiffs deposed were able to provide that information. Ex. E, Palmer Tr. 113:23-114:4 (testifying he

); Ex. F, Felt Tr. Felt Tr. 122:14-24 (testifying she

Ex. D, Borsay Tr. 258:17-260:23. Incredibly, Ms. Borsay even testified

Id., Borsay Tr. 252:18-254:5,

Ex. K, Calhoun Borsay Tr. 53:12-14. Like the other witnesses,

Ex. D, Borsay Tr. 266:8-20, 262:3-11, 253:7-25 (testifying she

Plaintiffs deposed lower-level employees about

1 2 3 4 5 6 7 8 9 10	Ex. N, and Ex. O. These documents establish [REDACTED]	Ex. P, McClelland Tr. 118:11-18 (<i>id.</i> 120:8-10 [REDACTED]); <i>see also</i> Ex. Q, Mardini Tr. 317:12-319:18 [REDACTED] . Mr. Palmer, [REDACTED] Ex. E, Palmer Tr. 187:7-189:7 [REDACTED] During the <i>Calhoun</i> deposition of Chetna Bindra [REDACTED] Ex. R, <i>Calhoun</i> Bindra Tr. 218:11-15.
11 12 13 14 15 16 17 18	2019 Pichai & [REDACTED] In April 2019, Google employee AbdelKarim Mardini reported that [REDACTED] Ex. S. Mr. Mardini [REDACTED] <i>Id.</i> (emphasis added). These documents establish that [REDACTED]	Mr. Mardini testified he [REDACTED] Ex. Q, Mardini Tr. 334:21- 335:11, 336:13-20. Plaintiffs also questioned Ms. Twohill about this, and she testified [REDACTED] Ex. T, Twohill Tr. 82:14-83:4.
19 20 21 22 23 24 25	2019 Pichai & Incognito : An April 2019 [REDACTED] Ex. U. This document shows [REDACTED] .	This document was produced from the files of Mr. Mardini, but he [REDACTED] Ex. Q, Mardini Tr. 327:24- 328:17. No deponents were able to provide any information regarding Mr. Pichai's [REDACTED]
26 27 28	2019 Pichai & Incognito : In July 2019, Google employees discussed	Plaintiffs also questioned Mr. Halavati about this document, and [REDACTED]

1	[REDACTED]	Ex. W, Halavati Tr. 99:11-100:2. Plaintiffs also 2 questioned another Google employee who [REDACTED] 3 Ex. V. This document shows first- 4 hand, superior knowledge by Mr. Pichai about [REDACTED] 5 [REDACTED] Ex.
6	2019 Pichai & Incognito 7 : An October 2019 [REDACTED] 8 [REDACTED] 9 Ex. Y. This document 10 establishes Mr. Pichai has first-hand, superior 11 knowledge about [REDACTED] 12 [REDACTED] Ex. Q, Mardini 13 Tr. 371:5-373:5.	No deponent has been able to provide any 14 insight into Mr. Pichai's [REDACTED] 15 [REDACTED]
16	2021 Pichai & Incognito 17 In 2021, Ms. Twohill emailed Mr. 18 Pichai [REDACTED] 19 Ex. Z. [REDACTED] 20 [REDACTED] Ex. T, Twohill Tr. 120:5-21 21 (testifying she [REDACTED] 22 [REDACTED] 23 131:17-19 (testifying she [REDACTED] 24 [REDACTED]	During her deposition, Ms. Twohill [REDACTED] 25 [REDACTED] 26 [REDACTED] Ex. T, Twohill Tr. 120:5-21 27 (testifying she [REDACTED] 28 [REDACTED]
20	[REDACTED] 21 [REDACTED] 22 [REDACTED] 23 Ex. AA. In 24 2009, when Google employees discussed [REDACTED] 25 [REDACTED] 26 Ex. BB. Mr. Pichai [REDACTED] 27 [REDACTED]	Plaintiffs deposed Brian Rakowski, who [REDACTED] 28 [REDACTED] Ex. DD, Rakowski Tr. 20:12-22:24. Mr. Rakowski— [REDACTED]

1 Ex. CC.

2 Rakowski Tr. 212:14-214:25.

Ex. DD,

The evidence here far exceeds what was deemed sufficient to depose CEOs in many other cases. *See, e.g., Wonderland Nurserygoods Co. v. Baby Trend, Inc.*, 514CV1153JWHSPX, 2022 WL 1601402, at *3–4 (C.D. Cal. Jan. 7, 2022) (allowing 4-hour CEO deposition where party “made a plausible showing” that CEO “may have unique knowledge” even though “efforts to use less intrusive discovery methods could have been more thorough”); *In re Google Litig.*, No. C 08-03172 RMW PSG, 2011 WL 4985279, at *2 (N.D. Cal. Oct. 19, 2011) (allowing deposition of former Google CEO Larry Page for three hours where party had shown he had “unique knowledge of facts that cannot be secured by other less intrusive means of discovery”); *Khan v. Boohoo.com USA, Inc.*, CV2003332GWJEMX, 2021 WL 3882969, at *2–3 (C.D. Cal. July 28, 2021) (allowing 4-hour CEO deposition where emails showed CEO was “hands on” and had “direct involvement” in relevant decisions); *Finisar Corp. v. Nistica, Inc.*, No. 13-CV-03345-BLF(JSC), 2015 WL 3988132, at *2 (N.D. Cal. June 30, 2015) (allowing CEO deposition where no other deponents were “able to testify to the contents of [relevant] conversations”); *In re Apple iPhone Antitrust Litig.*, No. 11CV06714YGRTSH, 2021 WL 485709, at *3 (N.D. Cal. Jan. 26, 2021) (allowing 7-hour CEO deposition because as CEO, he had “unique and non-repetitive” knowledge of Apple’s business model); *WebSideStory, Inc. v. NetRatings, Inc.*, No. 06CV408 WQH(AJB), 2007 WL 1120567, at *3, *5 (S.D. Cal. Apr. 6, 2007) (permitting deposition of CEO with “unique, relevant knowledge” after party completed only one deposition, which “would aid in developing and refining a line of questioning” for CEO deposition); *Opperman v. Path, Inc.*, No. 13-CV-00453-JST, 2015 WL 5852962, at *2 (N.D. Cal. Oct. 8, 2015) (allowing CEO deposition where CEO “personally participated in” and also “appears” he “may have been involved” in relevant decisions). Google opposed the addition of more document custodians and depositions, and Google at this point should not be allowed to argue that Plaintiffs should have deposed others. Plaintiffs have done more than enough.

27 Dated: July 21, 2022

Respectfully submitted,

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2 Beko Reblitz-Richardson

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